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From: Kevin J. Zilka		

Docket No.: NAI1P393_01.162.01 **App. No: 10/061,415**

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of	)
	)
Libenzi et al.	) Group Art Unit: 2131
	)
Application No. 10/061,415	) Examiner: Henning, Matthew T.
	)
Filed: February 1, 2002	) Docket No. NAI1P393_01.162.01
	)
For: SYSTEM AND METHOD FOR PROVIDING PASSIVE SCREENING OF TRANSIENT MESSAGES IN A DISTRIBUTED COMPUTER ENVIRONMENT	) Date: August 16, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 1.193)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer on June 16, 2006.

With respect to the present issue, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

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Issue #1:

The Examiner has stated that the objection to the specification as failing to provide proper antecedent basis for the claimed subject matter relates to petitionable subject matter under 37 CFR 1.181 and is not appealable subject matter.

Issue #2:

The Examiner has maintained his argument that Claims 32 and 41 fail to meet the written description requirement of 35 U.S.C. 112, first paragraph. Specifically, the Examiner has again argued that the Claims 32 and 41 state "that each of a plurality of modules process each datagram."

The Examiner has further argued that Page 7, line 29-Page 8, line 5, as cited by appellant, do not support appellant's argument that the claims include the limitation that "each of a plurality of protocol-specific modules process each reassembled datagram based on an upper protocol layer employed by the reassembled datagram." The Examiner has stated that such citation only states "that the antivirus scanner retrieves the re-assembled packets through the protocol specific submodules."

First, appellant respectfully asserts that the claim language, when read in its entirety, clearly requires "each of a plurality of protocol-specific modules process[ing] each reassembled datagram based on an upper protocol layer employed by the reassembled datagram" (emphasis added).

Second, Page 7, line 29-Page 8, line 5 in appellant's specification, which supports such claim language, clearly states that the "antivirus scanner 32 includes a plurality of protocol-specific scanning submodules 35-38, including submodules for the Hypertext Protocol (HTTP), File Transfer Protocol (FTP), Simple Mail Transport Protocol (SMTP), and Network News Transport Protocol (NNTP), although other upper layer network protocols could also be implemented"

(emphasis added). Moreover, Figure 2 explicitly shows the antivirus scanner 32 as being comprised of the protocol-specific scanning submodules 35-38.

Thus, "[t]hrough each protocol-specific submodule 35-38, the antivirus scanner 32 retrieves each re-assembled packet...for scanning," as stated in the specification. Since each protocol-specific submodule 35-38 is a "protocol-specific scanning submodule" (see page 7, lines 29-30-emphasis added), and since the antivirus scanner includes such protocol-specific scanning submodules, it is clear that the scanning is performed by the protocol-specific scanning submodules that retrieve the reassembled packets.

Clearly, when read in context, appellant's claimed "each of a plurality of protocol-specific modules process each reassembled datagram based on an upper protocol layer employed by the reassembled datagram," is thus supported by the specification (emphasis added).

With respect to Claims 53-54, the Examiner has again argued that "it is the antivirus scanner that performs the scanning, and not the submodules." However, appellant again respectfully points out that the antivirus scanner includes the protocol-specific scanning submodules (see Figure 2 and Page 7, lines 29-30). Thus, the antivirus scanner performs the scanning through the protocol-specific scanning submodules.

Issue #3

Group #1: Claims 1-2, 5, 7-10, 13-14, 16-17, 20, 22-25, 31, 28-29

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

With respect to appellant's claimed "network interface passively monitoring a transient packet stream at a network boundary" (see the same or similar, but not identical language in

independent Claims 1 and 16), the Examiner has argued that the term "passive" is defined as "receiving or subjected to an action without responding or initiating an action in return" and that "although the 'physical interface' [in Maher] does frame and format the data that it receives, the 'physical interface' does not 'react' to the data that is received, but instead acts in the same manner on all data it receives." Thus, the Examiner has concluded that the "physical interface" of Maher is passive and therefore meets appellant's claimed "network interface passively monitoring a transient packet stream at a network boundary."

First, appellant respectfully asserts that, according to the definition relied on by the Examiner, passive means "receiving... without responding or initiating an action in return." Clearly, such definition is different than saying that an entity "acts in the same manner on all data it receives," as the Examiner has assumed. Accordingly, the Examiner's argument that the physical interface in Maher is passive since it acts in the same manner on all data it receives is not supported by the above definition.

More importantly, framing the data, and formatting the data along with a processor that performs traffic flow management, as in Maher, clearly teaches "initiating an action in response to data," contrary to the Examiner's arguments. Moreover, Maher expressly teaches that the "[i]nput physical interface 102 takes the data from the physical ports." Clearly, taking data in such a manner (in addition to the other aforementioned actions) does not meet appellant's claimed "passively monitoring a transient packet stream at a network boundary" (emphasis added), in the context claimed.

The Examiner has also argued that the fast-path data bus in Maher "is in fact a network interface for the scanning processor 140, as it is the interface to the scanning processor which provides the scanning processor with network data." In addition, the Examiner has argued that the fast-path data bus in Maher is passive because "it simply passes on the received data." The Examiner has also stated that the past-path data bus is "analogous to an electric wire, which when a signal is applied to one end, the signal is passed through the wire" and that "an electric wire is 'passive', as is the 'fast-path data bus'."

Appellant again respectfully asserts that the Maher teaches that an "[i]nput physical interface 102 takes the data from the physical ports, frames the data, and then formats the data for placement on fast-path data bus 126" (Col. 5, lines 52-55). Thus, it is the input physical interface 102 in Maher that acts as a network interface, since it is the input physical interface 102 that interfaces between the network and the scanner. Clearly, the fast path data bus 126 in Maher is only an intermediary between the input physical interface 102 and the scanner, but is not itself a network interface in the manner claimed by appellant. Note that the fast path data bus 126 does not interface the network.

Appellant also respectfully asserts that Maher expressly discloses that the "[f]ast-path data bus 126 feeds the data to traffic flow scanning processor 140." Clearly, feeding data to the scanner is an action taken by the fast-path data bus 126 in response to the placement of the data on the fast-path data bus 126 by the input physical interface 102 (see Col. 5, lines 52-59). Thus, the fast-path data bus in Maher does not meet appellant's claimed "network interface," in the context claimed.

With respect to appellant's claimed "packet receiver reassembling one or more of the incoming datagrams into a segment structured in compliance with a transport protocol layer" (see the same or similar, but not identical, language in independent Claims 1 and 16), the Examiner has argued that appellant only claims "that the datagrams be in compliance with 'a transport layer protocol'." The Examiner has therefore argued that Maher discloses ATM cells that are assembled into complete data packets (Col. 6, lines 4-7), and that because appellant's "claim language only requires that the datagram be compliant with a layer, Maher meets this limitation by having complete ATM data packets.." Moreover, the Examiner has argued that Maher also discloses creating datagrams in compliance with the network layer (Col. 6, lines 4-7).

Appellant respectfully disagrees with the Examiner's assertions. Contrary to the Examiner incorrect interpretations regarding what is claimed, appellant specifically claims "reassembling one or more of the incoming datagrams into a segment structured in compliance with a transport protocol layer" (emphasis added). Thus, it is the segment that is structured in compliance with the transport layer protocol, and not merely the datagrams, as the Examiner has argued. Since

Maher only discloses assembling ATM cells into data packets, clearly appellant's claimed "segment structured in compliance with a transport protocol layer" has not been met, as claimed.

Still yet, with respect to appellant's claimed "protocol-specific module processing each reassembled datagram based on the transport protocol layer employed by the reassembled datagram" (see the same or similar, but not identical, language in independent Claims 1 and 16), the Examiner has argued that the QoS in Maher is protocol specific "because it processes data based on the 'protocol' of the data" (Col. 7, paragraph 3).

Appellant respectfully asserts that, in Maher, the QoS itself is not protocol-specific, since it "assigns the data packet to one of its internal quality of service queues 132." The Qos in Maher assigns, and therefore processes, all data packets to appropriate queues. Clearly, such a teaching shows that the QoS is not itself protocol-specific such that it processes "each reassembled datagram based on the transport protocol layer employed by the reassembled datagram," in the manner claimed by appellant (emphasis added).

The Examiner has also argued that the data packets in Maher are assigned to a queue based on the application type of the packet and that the application type is associated with the application layer of the OSI model. The Examiner has specifically argued that Maher "disclosed the header pre-processor scanning the headers of the packet for certain information including source address, destination address, source port, destination port, and protocol" and that in order to have retrieved such information from the headers, "processing based on header types must have been performed." The Examiner has thus concluded that "the processing must have been based on the transport protocol layer that the header was associated with, because knowledge of where the information was located in the header is required to locate the information" and that "the header pre-processor [in Maher] processes based on the specific protocol layers, and is therefore protocol-specific."

It seems the Examiner has attempted to combine the processing by the header pre-processor (Col. 6, paragraph 3) along with the processing by the QoS (Col. 7, paragraph 3) to meet appellant's claimed "protocol-specific module processing each reassembled datagram based on

the transport protocol layer employed by the reassembled datagram." Clearly, processing performed by a header pre-processor and a QoS does not meet appellant's claimed "protocol-specific module [that] processes each reassembled datagram," as claimed. In addition, the header pre-processor processes all packets, which clearly suggests that the header pre-processor is not protocol-specific, as appellant's claim requires.

Moreover, the source address, destination address, source port, destination port, and protocol of the data packet are only identified by the header pre-processor in order to identify packets within the same traffic flow (Col. 6, lines 30). Simply nowhere in Maher is there any suggestion that such information is utilized by the QoS for transmitting the packets to particular queues, as apparently argued by the Examiner.

In addition, appellant respectfully asserts that the header pre-processor in Maher simply cannot meet appellant's claimed "protocol-specific module." In particular, the header pre-processor in Maher scans the header information before the ATM cells are assembled into complete data packets (see Col. 5, line 63-Col. 6, line 7). Appellant, on the other hand, specifically claims "a protocol-specific module [that processes] each reassembled datagram based on the transport protocol layer employed by the reassembled datagram" (emphasis added).

The Examiner has further noted that in the appeal brief filed April 3, 2006, as excerpted below, appellant admitted that Maher meets appellant's claimed "protocol-specific module processing each reassembled datagram based on the transport protocol layer employed by the reassembled datagram."

> Further, the only protocol mentioned in the context of the Maher excerpt relied on by the Examiner relates to a protocol of a data packet (see Col. 5, lines 65-66). Clearly, simply assigning a packet to a queue and/or, in a separate context, determining a protocol of a data packet, as in Maher, does meet appellant's claimed specific claim language, namely "processing each reassembled datagram based on the transport protocol layer employed by the reassembled datagram" (emphasis added).

Appellant respectfully points out that, when read in the context of the argument, it is clear that such admission was the result of a typographical error based on the omission of the word "not."

Thus, appellant respectfully asserts that what was meant was that "simply assigning a packet to a queue and/or, in a separate context, determining a protocol of a data packet, as in Maher, does not meet appellant's claimed specific claim language, namely 'processing each reassembled datagram based on the transport protocol layer employed by the reassembled datagram'" (emphasis added), as claimed.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Maher reference, since Maher fails to at least suggest all of appellant's claim limitations, as noted above.

Group #2: Claims 3 and 18

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has argued that appellant's claim language does not require that the network protocol-specific decoder only receive one type of packet, but has read appellant's claimed "network protocol-specific decoder" to mean a decoder that decodes based on network protocols.

Appellant respectfully asserts that the Examiner's interpretation of appellant's claim language is mistaken. As claimed, the decoder itself is protocol-specific. Thus, the decoder is specific to a particular protocol. Appellant again argues that simply nowhere does Maher even suggest that

such string preprocessor or even content processor is a "network protocol-specific decoder," as claimed by appellant (emphasis added).

In fact, Maher discloses that the "content processor 110 is operable to scan the contents of data packets forwarded from header preprocessor 104" (Col. 8, lines 35-37), where the header preprocessor is fed the data received from a high-speed network line (Col. 5, lines 42-60). Clearly, Maher teaches that all data packets are fed to the header preprocessor and that "[a]fter [the] data packets have been processed by header preprocessor 104 the data packets...are sent on fast-data path 126 to the...content processor" (Col. 6, lines 8-12). Thus, since the string preprocessor and the content processor accept all data packets, they cannot be network protocol-specific decoders, in the manner claimed by appellant.

Again, appellant respectfully asserts that Maher fails to teach all of appellant's claim limitations, for substantially the reasons noted above.

Group #3: Claims 4 and 19

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has argued that appellant's "claim language does not require termination depending on whether there is a match, or that in all cases in which a match is not made, termination occurs, or even that in only cases when a match is not made, termination occurs." The Examiner has further argued that appellant's claim language only requires "that in at least one case when a match is not made, termination occurs." Thus, the Examiner asserted that Maher discloses that "packets which are not infected are placed in the QoS queues, and if there is not enough bandwidth to process all the packets, the packets are selectively terminated" (Col. 7, lines 7-33).

Appellant respectfully asserts that appellant expressly claims that "the antivirus scanner terminates the transient packet stream if the reassembled segment is not infected with at least one of a computer virus and malware." Thus, "if the reassembled segment is not infected with at least one of a computer virus and malware[, then the antivirus scanner terminates the transient packet stream]." Simply nowhere does appellant's claims state that "in at least one case when a match is not made, termination occurs," as the Examiner contends.

In addition, Maher does not teach that "packets which are not infected are placed in the QoS queues" as the Examiner contends. Instead, Maher teaches that "if the contents of a data packet, or packets, match a known signature, an action associated with that signature and/or session id can be taken by network apparatus 100" (Col. 6, lines 60-63-emphasis added). However, nowhere does Maher disclose that such action includes "terminat[ing] the transient packet stream," as appellant claims.

Furthermore, discarding data in a queue when bandwidth is not available (Col. 7, lines 30-33), as in Maher, does not even suggest "terminat[ing] the transient packet stream if the reassembled segment is not infected with at least one of a computer virus and malware," as claimed by appellant (emphasis added). Still yet, in Maher "[i]nformation in queues that do not have the available bandwidth to transmit all the data currently residing in the queue...is selectively discarded." Thus, data packets located in the queue are selectively discarded, which clearly does not meet appellant's claimed "terminat[ing] the transient packet stream" (emphasis added), in the context claimed.

The Examiner has also argued that Maher discloses "that once it has been determined [by the scanner] that there is or isn't a match, scanning is complete, no more data requests are performed and the traffic flow to the scanner is stopped" (Col. 9, line 65-Col. 10, line 5).

Appellant respectfully asserts that simply completing scanning and stopping a traffic flow to a scanner, as Maher allegedly teaches, only suggests terminating the scanning. Clearly, terminating scanning does not even suggest "terminat[ing] the transient packet stream," as appellant claims (emphasis added).

Again, appellant respectfully asserts that Maher fails to teach all of appellant's claim limitations, for substantially the reasons noted above.

Group #4: Claims 6 and 21

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has argued that Maher's disclosure of altering bits of an infected attachment (Col. 10, lines 42-46) meets appellant's claimed "spoofing a valid datagram in place of the infected datagram." The Examiner has relied on appellant's specification in defining "spoof" as "sending a valid packet."

Appellant, however, points out that the specification describes "spoof" as "a valid packet [being] sent as a spoof of an infected packet (block 145) by way of the outgoing packet queue 48" (page 12, lines 29-31). Appellant also points out that the specification describes "spoof" in the context of "spoof[ing] the origin server by sending a legitimate packet in place of the infected packet" (page 8, lines 9-12-emphasis added).

Appellant respectfully asserts that Maher only discloses altering bits of an email attachment to render an email harmless. However, simply nowhere does Maher disclose that the harmless email is a spoof, such that it spoofs the origin server. Thus, when read in the context of the specification, Maher simply does not disclose "spoofing a valid datagram in place of the infected datagram," in the manner claimed by appellant.

Again, appellant respectfully asserts that Maher fails to teach all of appellant's claim limitations, for substantially the reasons noted above.

Group #5: Claim 55

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has argued that "in order to get from the Data Link Layer (ATM) to the Application layer (where the appellant's list of email protocols, IMAP, POP3, SMTP, and HTTP, are located), the system [in Maher] had to strip off the Network layer header to arrive at the Transport layer (where TCP is located), then strip off the Transport layer header to arrive at the Session layer, then strip off the Session layer header to arrive at the Presentation layer, and finally stop off the Presentation layer header to arrive at the Application layer (this is shown in very clearly in Fig. 7.1 on Page 10 of TCP/IP illustrated)."

The Examiner has also argued that IP based email protocols, including the four listed above, are also TCP based email protocols, and that to get to the application layer in Maher, TCP segments must have been created.

Appellant respectfully asserts that Maher expressly discloses that the "[h]eader preprocessor 104 is operable to perform the assembly of asynchronous transfer mode (ATM) cells into complete data packets (PDUs)" (Col. 6, lines 4-7), and that header information of such ATM cells is scanned to decode the IP header starting byte (Col. 5, line 65-Col. 6, line 1). Thus, clearly Maher teaches only the IP header, and not any TCP header associated with the data packets.

In addition, appellant respectfully disagrees with the Examiner's assertion that IMAP, POP3, SMTP, and HTTP are TCP based email protocols, such that Maher's email data was inherently processed to TCP segments. In fact, TCP/IP uses several protocols, including TCP, etc. Thus, TCP itself does not inherently include IMAP, POP3, SMTP, and HTTP based protocols.

Again, appellant respectfully asserts that Maher fails to teach all of appellant's claim limitations, for substantially the reasons noted above.

Issue #4

Group #1: Claims 32-35, 38, 41-44, 47 and 50-51

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has argued that "in computing, the receiving end does not receive a physical object, but instead receives signals which are interpreted by the receiver to recreate the data" and that thus "the recreated datagram is a copied datagram" to meet appellant's claimed "receiving copies of datagrams transiting a boundary of a network domain into an incoming packet queue, each datagram being copied from a packet stream." The Examiner has therefore concluded that Maher meets appellant's claimed "network interface receiving copies of datagrams transiting a boundary of a network domain into an incoming packet queue, each datagram being copied from a packet stream."

Appellant again respectfully asserts that Maher expressly discloses that the "[i]nput physical interface 102 takes the data from the physical ports, frames the data, and then formats the data for placement on fast-path data bus 126." Appellant again emphasizes that such excerpt from Maher expressly discloses that the "[i]nput physical interface 102 takes the data from the physical ports, frames the data, and then formats the data for placement on fast-path data bus 126." Thus, in Maher, the actual data from the physical ports is received, and not copies of the data, in the manner claimed by appellant.

Moreover, simply nowhere does Maher even suggest "receiving copies of datagrams...[that are] copied from a packet stream," as claimed by appellant (emphasis added). In addition, such

excerpt from Maher does not teach "receiving [the] copies of datagrams...into an incoming packet queue," in the manner claimed by appellant (emphasis added).

The Examiner has also relied on the arguments cited above with respect to Issue #3, Group #1 to meet appellant's claimed "packet receiver reassembling one or more such datagrams from the incoming packet queue into network protocol packets, each staged in a reassembled packet queue" (see the same or similar, but not identical, language in independent Claims 32 and 41). Appellant respectfully points out the arguments presented above with respect to Issue #3, Group #1, which clearly shows that Maher does not meet such claim language.

In addition, the Examiner has argued that "Maher clearly disclosed placing the reassembled packets into a packet storage memory while they are processed" and that the "*Microsoft Computer Dictionary Third Edition* defines a 'queue' as 'a multi-element data structure from which (by strict definition) elements can be removed only in the same order in which they were inserted' and further goes on to say that '[t]here [are] also several types of queues in which removal is based on factors other than order of insertion'."

Appellant respectfully asserts that *Microsoft Computer Dictionary Third Edition*, as relied on by the Examiner, clearly states that a queue is "a multi-element data structure from which (by strict definition) elements can be removed only in the same order in which they were inserted" (emphasis added). Clearly, Maher only generally teaches a "packet storage memory," which does not meet appellant's specifically claimed "reassembled packet queue," in the context claimed.

Still yet, the Examiner has argued that "Maher did disclose that the packets are placed in a priority queues based on the type of application" and that the "only processing performed by the 'protocol-specific modules' [as claimed by appellant]...is getting data from a queue and sending it to be scanned." The Examiner has further argued that the "queues [in Maher] receive data of specific protocols and send them out onto the network" and that such queues meet appellant's claim language.

First, appellant respectfully points out that appellant claims "each of a plurality of protocol-specific modules process each reassembled datagram based on an upper protocol layer employed by the reassembled datagram," and not merely that the only processing performed by "protocol-specific modules... is getting data from a queue and sending it to be scanned," as the Examiner contends.

In addition, appellant respectfully points out the arguments made above with respect to Issue #2 and Issue #3, Group #1. For example, appellant points out that, in Maher, the QoS itself is not protocol-specific, since it "assigns the data packet to one of its internal quality of service queues 132." The Qos in Maher assigns, and therefore processes, all data packets to appropriate queues. Clearly, such a teaching shows that the QoS is not itself protocol-specific such that it processes "each reassembled datagram based on the transport protocol layer employed by the reassembled datagram," in the manner claimed by appellant (emphasis added).

Still yet, appellant respectfully asserts that the queues in Maher do not "process each reassembled datagram," in the manner claimed by appellant (emphasis added). Specifically, appellant points out that Maher only discloses that the "QoS processor 116...assigns the data packet to one of its internal quality of service queues 132 based on the conclusion" and that the "QoS queues 132...feed into schedulers 134" (Col. 7, lines 18-55). Clearly, the queues in Maher do not process the data packets (as claimed), as the Examiner contends, but instead merely temporarily hold the data packets.

Appellant again respectfully asserts that Maher only utilizes a single QoS processor that assigns the packets to queues (see item 116 in Figure 2), and therefore *teaches away* from "a plurality of protocol-specific modules [that] process each reassembled datagram," in the context claimed by appellant (emphasis added).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior

art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claim 52

With respect to the present grouping, appellant hereby incorporates the detailed arguments of the previously filed appeal brief filed April 3, 2006 and, in the interest of a compact response to the Examiner's arguments regarding the present grouping, appellant hereby responds to the Examiner's arguments in the Examiner's Answer point-by-point below.

The Examiner has agreed that Maher did not specifically state that only IP protocol datagrams are reassembled. The Examiner has argued, however, that Maher "did disclose that this was for use with the IP protocol" (Col. 3, last paragraph) and that "nowhere in Maher is there any suggestion of using any non-IP protocol." Thus, the Examiner has concluded that "Maher only disclosed reassembling IP datagrams and did not disclose reassembling any other types of network layer datagrams."

Appellant respectfully points out that Maher expressly discloses that the "[i]nput physical interface 102 can consist of a plurality of ports, and can accept any number of network speeds and protocols, including...10/100 Ethernet, gigabit Ethernet, and SONET" (Col. 5, lines 48-52-emphasis added). Thus, Maher does not meet appellant's claimed technique "wherein only datagrams compliant with IP protocol are reassembled."

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Issue #5

The Examiner has noted that no new arguments have been presented. Appellant respectfully points out the arguments made above with respect to Issues #3 and 4 which clearly show that Maher, when taken alone or in combination, does not meet appellant's claim language.

Issue #6

The Examiner has noted that no new arguments have been presented. Appellant respectfully points out the arguments made above with respect to Issues #3 and 4 which clearly show that Maher, when taken alone or in combination, does not meet appellant's claim language.

Issue #7

The Examiner has noted that no new arguments have been presented. Appellant respectfully points out the arguments made above with respect to Issues #3 and 4 which clearly show that Maher, when taken alone or in combination, does not meet appellant's claim language.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P393/01.162.01).

Respectfully submitted,

By: _____ Date: 8/16/06

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